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Human rights bodies and mechanisms

Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights

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I. Introduction

1. On 13 June 2013, the Human Rights Council adopted its resolution 23/9, in which it requested the Advisory Committee to submit a research-based report to the Council, at its twenty-sixth session being held in June 2014, on the issue of the negative impact of corruption on the enjoyment of human rights, and to make recommendations on how the Council and its subsidiary bodies should consider this issue.

2. During its eleventh session, on 16 August 2013, the Advisory Committee established a drafting group for the present report, composed of Saeed Mohamed Al Faihani, Laurence Boisson de Chazournes, Mario Luis Coriolano, Latif Hüseynov, Alfred Ntunduguru Karokora, Obiora Chinedu Okafor, Katharina Pabel (Rapporteur), Anantonia Reyes Prado, Dheerujlall Seetulsingh, Ahmer Bilal Soofi and Imeru Tamrat Yigezu (Chair).

3. At the same session of the Advisory Committee, the drafting group developed a questionnaire, in accordance with Council resolution 23/9, which was sent to different stakeholders and had a deadline of 31 October 2013, which was later extended to 14 November 2013. A total of 73 responses were received: 37 from States, 16 from national human rights institutions, 14 from non-governmental or civil society organizations, and six from international or regional organizations or academic institutions.

4. During its twelfth session, which was held in February 2014, the Advisory Committee and the drafting group discussed, both in public and in private, the "Preliminary research-based report on the negative impact of corruption on the enjoyment of human rights" (A/HRC/AC/12/CRP.3), which had been prepared in the intersessional period. Further discussions were held during the thirteenth session of the Committee, in August 2014, on the basis of which the preliminary report was further elaborated.

II. What is corruption?

A. Definition of corruption

5. To this day, there is no single, consistent and recognized definition of corruption, at the international level. Remarkably, even the United Nations Convention against Corruption[1] does not provide a definition of corruption, even though the purpose of that Convention is specifically to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, and to promote and support international cooperation in the prevention of and fight against corruption.[2] A common approach to the notion of corruption is the definition proposed by Transparency International. According to that definition, corruption is "the abuse of entrusted power for private gain".[3] This, however, is a rather broad definition which encompasses a wide range of different behaviours. In contrast to the provisions typically included in criminal law, which determine specific offences, the above-mentioned definition is more open. At the same

[1] The United Nations Convention against Corruption entered into force in 2005. Available from http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

[2] See art. 1 of the United Nations Convention against Corruption.

[3] Transparency International is a non-governmental organization that works internationally to promote "a world in which government, politics, business, civil society and the daily lives of people are free of corruption". See http://www.transparency.org/whatwedo.

time, a definition based on the three specific elements of "abuse", "entrusted power" and "for private gain" may exclude some conducts that should also be characterized as corruption. For example, the use (or abuse) of illegally claimed power can lead to corruption. This rather broad definition can, therefore, nevertheless be too narrow in respect of specific forms of misbehaviour that should also be regarded as corruption.

6. For the purposes of the present report, it is not absolutely necessary to develop a clear-cut definition of corruption. In order to analyse the link between corruption and impairment of the enjoyment of human rights, the result and impact of the conduct should constitute the focus of interest. Moreover, the development of a definition of corruption was not part of the Human Rights Council's request to the Advisory Committee to prepare a report on the negative impact of corruption on the enjoyment of human rights.

B. Different categories of corruption

7. Even though there is no generally agreed definition of corruption, different forms of corruption have been recognized. When looking at corruption from a human rights perspective, it is interesting to differentiate between corruption by the State (corruption in the public sector) and corruption by non-State entities (corruption in the private sector).[4] Corruption in the public sector can occur in government, in administration, in the legislature and in the judiciary.[5] In those contexts, the State is clearly accountable for any violation of human rights resulting from the conduct of persons acting in their public capacity.

8. Non-State actors play a crucial role in the proliferation of corruption in many countries. Companies can engage in acts of corruption by bribing State actors or other non-State actors (commercial bribery) or by receiving bribes. The non-State actors themselves are responsible for any act of corruption that they are involved in. They are bound by criminal and civil law and must bear all legal consequences. A number of private sector organizations and initiatives exist that are dedicated to the fight against corruption in business. Among these, the United Nations Global Compact[6] is an important initiative that provides a principle-based framework for businesses in order to tackle corruption.[7]

9. The State has a duty to protect against any adverse human rights impacts arising from acts of corruption by non-State actors, including corruption by the private sector. The duty of States to protect against human rights abuses by third parties obliges States to take effective regulatory or other measures to prevent such acts by third parties, to investigate violations that occur, to prosecute the perpetrators as appropriate, and to provide redress for victims. Examples of efforts that have been undertaken in that regard include measures to ensure transparency and equality in public procurement, such as public procurement schemes in different countries, or, at the international level, the World Trade Organization agreement on government procurement.[8] Furthermore, strategies to repatriate funds of illicit

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[4] See, for example, Sharon Eicher, *Corruption in International Business* (Gower Publishing Company, 2009), p. 4 et seq.

[5] In respect of the phenomenon of judicial corruption and combating corruption through the judicial system, see A/67/305.

[6] See http://www.unglobalcompact.org (accessed 15 October 2014).

[7] See, for example, Jean-Pierre Méan, "The actors in the fight against corruption", in *Le pacte mondiale des Nations Unies 10 ans après*, Laurence Boisson de Chazournes and Emmanuelle Mazuyer, eds., (2011), pp. 69, 77 et seq.

[8] World Trade Organization, Revised Agreement On Government Procurement, annex to the Protocol Amending the Agreement on Government Procurement, adopted on 30 March 2012 (GPA/113).

origin can be another measure to counter the negative impact of corruption on the enjoyment of human rights, as such funds can be generated by corruption (see A/HRC/25/52).

10. Corruption not only occurs at the national level, but at the international level too, notably in international organizations, including international non-governmental organizations, and in transnational corporations. In the case of international organizations, each organization is responsible for its conduct and, especially, for any resulting violation of human rights. It is more difficult to establish the responsibility of specific States for corruption occurring within transnational corporations. On the one hand, each State is responsible for fulfilling its human rights obligations, and therefore must fight corruption committed by transnational corporations operating on its territory. On the other hand, it is quite clear that in order to fight corruption in transnational corporations adequately and effectively, there is a need for transnational and international efforts. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,[9] which constitute an authoritative global framework for managing risks to human rights arising from business activities, does not explicitly draw a link between business, human rights and corruption. Rather, the Guiding Principles imply that States have duties to ensure that corruption does not interfere with their obligations to protect against corporate-related human rights abuses. For their part, business enterprises have a responsibility to refrain from involvement in any corrupt activity that may impinge on the enjoyment of human rights. Consequently, the human rights–based approach to countering corruption established in the present report can help to fight corruption in national businesses and transnational enterprises.

III. In what respect does corruption have a negative impact on the enjoyment of human rights?

11. A link between human rights and corruption can be established in two different ways:

(a) A violation of human rights may occur as a result of a corrupt act;

(b) Anti-corruption measures could violate human rights.

12. Although it is important not to forget the second aspect (the violation of human rights through anti-corruption measures), especially if instruments of criminal prosecution are applied in combating corruption, the present report, in line with the request of the Human Rights Council, focuses on the first of the above-mentioned aspects of corruption.

Available at http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf (accessed 15 October 2014).

[9] The Guiding Principles were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (see the annex to the Special Representative's final report to the Human Rights Council (A/HRC/17/31)) and were endorsed by the Council in its resolution 17/4 of 16 June 2011.

13. As a result of developments over the past years, it has been established that there is a clear linkage between the negative impact of corruption and impairment of the enjoyment of human rights. For example, the Office of the United Nations High Commissioner for Human Rights (OHCHR) stated in November 2013:

> "In recent years, United Nations and regional organizations have increasingly recognized the negative impacts of corruption on the enjoyment of human rights."[10]

14. An important step in that direction was the United Nations conference on anti-corruption measures, good governance and human rights, which was organized pursuant to Commission on Human Rights resolution 2005/68 and was held in Warsaw on 8 and 9 November 2006 (see A/HRC/4/71). One session at that conference highlighted the adverse effect of corruption on human rights and aimed to identify the role of anti-corruption measures in protecting human rights and creating an environment conducive to the promotion of those rights.

15. Earlier, in its resolution 2003/2 of 13 August 2003, the Sub-Commission on the Promotion and Protection of Human Rights had established a mandate for a special rapporteur on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights. That mandate was subsequently endorsed by the Commission on Human Rights in its decision 2004/106. The Sub-Commission appointed Christy Mbonu as the Special Rapporteur, who was tasked with preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, based on her working paper (E/CN.4/Sub.2/2003/18) and the opinions expressed during the debate on the issue at the fifty-fifth session of the Sub-Commission. Also in resolution 2003/2, the Sub-Commission requested the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-sixth session, a progress report at its fifty-seventh session and a final report at its fifty-eighth session.

16. The Special Rapporteur endeavoured to establish in the working paper (E/CN.4/Sub.2/2003/18), the preliminary report (E/CN.4/Sub.2/2004/23) and the first and second progress reports (E/CN.4/Sub.2/2005/18 and A/HRC/11/CRP.1) that the enjoyment of both sets of rights, be they economic, social and cultural, or civil and political, were seriously undermined by the phenomenon of corruption. She pointed out in what respect human rights were affected by corruption. The conclusions and recommendations of the first progress report were endorsed by the Sub-Commission in its resolution 2005/16.

17. As corruption manifests itself in many ways and occurs in a multitude of contexts, it is nearly impossible to identify all of the human rights that can be violated by corruption. To give some examples: if there is corruption in the education sector, the right to education can be violated. If there is corruption in the judiciary, the right of access to courts and the right to a fair trial can be violated. If there is corruption in the health sector or the social welfare sector, the right to access to medical service or the right to food can be violated (among others). Moreover, the principle of non-discrimination can be affected if a person has to bribe someone in order to get favourable treatment or access to a public service. It is difficult to find a human right that could not be violated by corruption.

18. This view is supported by many of the responses to the questionnaire, by different stakeholders. The responses make it clear that corruption has a negative impact on the enjoyment of human rights. They mention a wide range of human rights that can be violated by corruption. These include economic and social rights, such as the right to work, the right to food, the right to housing, the right to health, the right to education, and the right to public services; the right to development; the principle of non-discrimination; and

[10] OHCHR, *The Human Rights Case Against Corruption* (Geneva, 2013), p. 4.

civil and political rights, such as the right to a fair trial and the right to public participation. This overview illustrates the above-mentioned thesis that nearly every human right can be affected by corruption; this point is highlighted in the submission by OHCHR.

19. Judicial corruption is a very concrete example that illustrates the negative impact of corruption on the enjoyment of human rights. While corruption in all areas threatens the rule of law, democracy, and human rights, in the case of judicial corruption the right of access to the court and the right to a fair trial by an independent, impartial and competent tribunal is directly affected.[11]

20. As States have different kinds of obligations resulting from their human rights commitments, it is useful to classify the possible violations of human rights caused by corruption according to the different obligations imposed on States:

(a) Firstly, corruption can affect individuals (individual negative impact). As has been shown before, there is often a direct violation of the human rights of the individual who is affected by corruption. Depending on the context in which corruption occurs, a wide range of different human rights can be violated. Corruption frequently results in discriminatory access to public services.[12] The impact on an individual can also be the result of an indirect effect from corruption. For example, if public authorities illegally allow the deforestation of land in return for a bribe, the right to food, the right to housing and the right to health of the people living in the area concerned may be violated;

(b) Secondly, corruption can affect specific, identifiable groups of individuals (collective negative impact). This category includes the effects of corruption that not only affect individuals but also impact upon groups of individuals. For example, corruption can exclude the poor from access to goods and services offered by the administration, or from access to justice. Or, coming back to the example given above, illegal deforestation may affect specific ethnic minorities or indigenous peoples living in the areas concerned. It can be concluded that vulnerable groups such as women, children, persons with disabilities, the elderly, the poor, indigenous people or people belonging to minorities are particularly affected by corruption. This is especially true in relation to access to public services and welfare, which is often of tremendous importance for people belonging to the above-mentioned groups. In her opening statement made on 13 March 2013 at the Human Rights Council's panel discussion on the negative impact of corruption on the enjoyment of human rights, the former High Commissioner for Human Rights referred, as an example of the negative impact of corruption on the enjoyment of human rights, to vulnerable groups' access to justice being undermined.[13] Sometimes, corruption is only one element of a human rights violation or one factor aggravating an already existing human rights violation concerning specific groups. For example, if the right to education of certain vulnerable groups is already violated as a result of discriminatory access requirements, the demand by an official for payment of a bribe compounds the human rights violation. Another example is persons deprived of their liberty, who can be victims of corruption, and at the same time, of inhuman or degrading treatment;[14]

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[11] Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights (background document prepared by the European Human Rights Association), AS/Jur (2014) 19, p. 10.

[12] See, for example, *The Human Rights Case Against Corruption*, p. 4.
See also International Council on Human Rights Policy and Transparency International, eds., *Corruption and Human Rights: Making the Connection* (2009), p. 32 et seq.

[13] *The Human Rights Case Against Corruption*, p. 4.

[14] For more detail, see the seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 83 et seq.

(c) Thirdly, corruption can concern society at large (general negative impact). This means that, in addition to the effect that corruption has on individuals or groups, there is also a negative impact upon society at large, whether this is in a national or an international sense. There are two main aspects that are frequently mentioned in discussions of the negative impact of corruption on human rights.[15] The first aspect relates to the financial and economic resources that are affected by corruption. Corrupt practices divert funds from development and therefore imply a reallocation of funds that may interfere with the effective enforcement of human rights, especially for vulnerable people. Corruption reduces the resources available for the progressive realization of economic, social and cultural rights (and therefore undermines States' obligations under article 2 of the International Covenant on Economic, Social and Cultural Rights). The second aspect relates to the realization of democracy and to implementation of the rule of law. If the authorities of a State are pervaded by corruption, the people's confidence in the government, and eventually in the democratic order and the rule of law, is undermined.

21. For the purposes of the present report, it is of minor importance whether a single act of corruption leads to a violation of human rights in a strictly judicial sense. The meaning of the term "negative impact on human rights" is much broader than "violation of human rights". While a court dealing with possible violations of human rights has to consider whether a specific human right has been violated, measures against corruption can take into account different types of negative impact from corruption.

22. Corruption has a negative impact on the enjoyment of human rights of all those affected by it. But its negative impact on the enjoyment of human rights by vulnerable persons is compounded. Persons belonging to minorities, indigenous peoples, migrant workers, persons with disabilities, refugees, prisoners, women, children and those living in poverty are often the first to suffer from the impact of corruption.[16] This underscores the obligation of every State to protect the human rights of people belonging to those groups in order to prevent any human rights violation caused by corruption.

23. Another approach to classifying types of corruption is to differentiate between active and passive corruption. This distinction is discussed, for example, in the commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which is sponsored by the Organization for Economic Cooperation and Development (OECD).[17] Active corruption means spending money or providing other benefits to achieve undue advantages, whereas passive corruption refers to the receipt of money or other benefits as an undue advantage. The distinction between offering bribes and taking bribes is very clear. Nevertheless, it is doubtful whether this distinction is helpful from a human rights perspective. The focus of the present report is on the negative impact of corruption on the enjoyment of human rights, and therefore it has a victim-oriented approach. In cases of corruption, it can be difficult to determine whether the victim has taken part in the corrupt act actively or passively. It is even possible that the victim has stood outside the corrupt agreement. For example, where people are forced to pay for access to public services, those who pay bribes are active in corruption but they are also victims. For that reason, the OECD anti-bribery convention does not use the term "active

[15] These aspects are also discussed in the OHCHR submission to the questionnaire.

[16] Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 80.

[17] Available from http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf. The Convention was adopted by the Negotiating Conference on 21 November 1997 and entered into force on 15 February 1999. See also the seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 72 et seq.

bribery", in order to avoid it being misunderstood as implying that the briber has taken the initiative and the recipient is a passive victim. It is more useful to determine which party is the victim in a corrupt setting. In many cases, this can be determined by examining the distribution of power between the parties to the corrupt agreement. Typically, the less powerful or even oppressed party will be the victim. This is reflected in the distinction between "petty corruption", which takes the form of a low-ranking public official taking a bribe for doing something that is already required by law or for not doing something that is prohibited by law, and "grand corruption", which is carried out by high-level officials who seek payment for exercising their discretionary powers.[18]

IV. What is the value in linking corruption with its negative impact on the enjoyment of human rights?

24. Corruption is mainly dealt with from a criminal perspective.[19] Anti-corruption measures — in the national and the international contexts — primarily concentrate on prosecution of the related criminal offences. International anti-corruption treaties encourage or even oblige States parties to take steps within their legal order to criminalize certain kinds of behaviour defined as corruption. However, discussing the negative impact of corruption on the enjoyment of human rights should not be seen as jeopardizing any effort to combat corruption by means of the criminal law. Corruption is a crime. Impunity in cases of corruption must end. In that sense, a human rights perspective to combating corruption and its effects is complementary to the criminal law approach.

25. However, the United Nations Convention against Corruption and regional conventions against corruption include preventive measures (e.g. accountability, transparency, and access to public information) that States parties are obliged to take. Without disregarding those efforts, anti-corruption measures are focused mainly on the consideration of criminal offences, the necessary sanctions, and international cooperation in prosecution. The situating of anti-corruption measures within the criminal law narrows the focus to the perpetrators. The purpose of criminal proceedings is — broadly speaking — to determine the person responsible for the offence. Focusing criminal proceedings on the perpetrator can lead to a loss of focus on the victim of the corruption. The position of those affected by corruption is not very strong in criminal proceedings. Furthermore, the criminal approach does not offer ways of addressing the structural problems caused by corruption. It is concentrated, by its very nature, on a single offence, and typically cannot address the collective and general effects of corruption referred to in the present report.

26. Corruption can also be combated by applying remedies from private law. This approach is quite common among States. In international law, the Civil Law Convention on Corruption, which was adopted by the Council of Europe in 1999,[20] deals, inter alia, with compensation for damage, liability, the validity of contracts and the protection of employees, and therefore focuses on the consequences of corruption in private law. Furthermore, the United Nations Convention against Corruption[21] requires each State party to take measures to address consequences of corruption, for example considering corruption

[18] See, for example, the statement by Nihal Jayawickrama in the report on the United Nations conference on anti-corruption, good governance and human rights, A/HRC/4/71, p. 8.

[19] Leonie Hensgen, "Corruption and human rights – making the connection at the United Nations", in the *Max Planck Yearbook of United Nations Law*, Armin von Bogdandy and Rüdiger Wolfrum, eds., vol. 17, pp. 197–219 (200) (Brill and Nijhoff, 2013).

[20] Civil Law Convention against Corruption, ETS No. 174.

[21] Adopted by the General Assembly in its resolution 58/4 of 31 October 2003.

a relevant factor in legal proceedings to annul or rescind a contract, or to withdraw a concession (article 34). Article 35 obliges States parties to take measures to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. One distinction between the criminal law approach and the private law approach in the fight against corruption is that the latter addresses the impact of corruption on the person concerned and aims to provide redress in the form of compensation.

27. A human rights perspective on the impact of corruption can add an approach that moves the victims to the centre of the fight against corruption. It does so by highlighting the negative impacts that corruption brings to the individual concerned, to groups of individuals typically affected by corruption (which are very often marginalized groups), and to society at large. Analysing the link between corruption and impairment of the enjoyment of human rights may contribute to a better understanding of the effects of corruption — notably, its human dimension and social implications — and can be an important step towards making corruption a public issue. In that way, the social impact of corruption is made visible; this generates awareness in society about the consequences of this scourge and creates new alliances in the fight against corruption.

28. Moreover, applying a human rights perspective to acts of corruption by State and non-State actors reveals that the State bears the ultimate responsibility for such acts. This responsibility means that the State must abstain from engaging in any form of corruption in order to avoid violating human rights. Moreover, the State is responsible for reacting to the negative impact of corruption in order to fulfil its human rights obligations, and in that connection, criminal prosecution is one of the instruments for combating corruption. Criminal prosecution is not, however, an effective tool for remedying the negative consequences of corruption for the individual, for specific groups or for society in general, while from a human rights perspective, States are required not only to prosecute such crimes, but also to take measures to address the negative impact of corruption. Furthermore, by looking at corruption from a human rights perspective, the need for preventive measures becomes even more apparent. By integrating a human rights perspective into anti-corruption strategies, the implementation of preventive policies relating to matters such as transparency, affidavits, laws on access to public information, and external controls, becomes an obligation.

29. Corruption can lead to a human rights violation directly or indirectly. Corruption may directly constitute a violation of a human right when a corrupt act is deliberately used as a means to violate a right, or when a State acts in a way that prevents individuals from enjoying that right or fails to act in a way that ensures that individuals can enjoy that right. In other situations, corruption is an essential factor contributing to a chain of events that eventually leads to the violation of a human right. In such a case, the right is violated by an act that derives from a corrupt act and the act of corruption is a necessary condition for the violation. Such a situation will arise, for example, if public officials allow the illegal importation of toxic waste from other countries in return for a bribe, and that waste is placed in, or close to, a residential area. The rights to life and health of residents of that area would be violated, with the violation caused indirectly as a result of the bribery. Another example is the situation of prisoners who are forced to bribe prison guards in order to avoid ill-treatment or to ensure good conditions of detention. This kind of corruption affects a whole group indirectly. As the Committee against Torture pointed out in a recent report: "Linking anti-corruption and human rights frameworks in practice requires an

understanding of how the cycle of corruption facilitates, perpetuates and institutionalizes human rights violations."[22]

30. From a more substantive perspective, there are parallels between the main anti-corruption principles (such as participation, transparency and access to information, and accountability) and the scope of human rights (such as freedom of expression and freedom of the media, access to information, and the principle of non-discrimination).[23] Therefore, strengthening the enjoyment of human rights in general, and of specific civil or political rights and the principle of non-discrimination in particular, is a valuable instrument in combating corruption. Whereas combating corruption through criminal law and private law means taking repressive and remedial measures, the promotion and strengthening of human rights is a preventative anti-corruption measure.

31. The need to integrate preventative measures into efforts against corruption has been clearly emphasized. Furthermore, promoting and strengthening human rights may — in the long term — contribute to a well-informed and emancipated civil society that is more and more able to reject corruption in all forms and circumstances. According to OHCHR: "An efficient anti-corruption strategy must be informed by key human rights principles. An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system and accountability are essential both for successful anti-corruption strategies and for the enjoyment of human rights."[24]

32. The linkage between anti-corruption measures and human rights can also promote access to human rights mechanisms to combat corruption. A wide range of mechanisms exists for monitoring compliance with human rights at the national, regional and international levels. By drawing a link between acts of corruption and violations of human rights, new opportunities for litigation or monitoring can be identified.[25] This approach is fully in line with article 34 of the United Nations Convention against Corruption. According to that provision, each State party must take measures to address the consequences of corruption. If a violation of human rights can be determined as a consequence of corruption, the State is obliged to ensure that appropriate measures are undertaken.

33. Combining strategies for fighting corruption and for promoting human rights can bolster both objectives. On the one hand, human rights can form a part of an anti-corruption strategy via the use of human rights mechanisms. On the other hand, fighting corruption is, in itself, a way of preventing human rights violations. By promoting the necessary elements of good governance (such as civil and political rights, transparency, and accountability), human rights and anti-corruption efforts can be mutually reinforcing.[26] For example, the ability to promote and protect civil and political rights rests upon the ability to effectively combat political and judicial corruption (and vice versa). Transparency and access to information empower individuals to make informed decisions — from exercising their voting rights, to monitoring how State expenditures are spent. At the same time, creating such openness limits opportunities for abuses by politicians, the police and judges. Businesses are thus provided with incentives to minimize their involvement in corruption.

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[22] Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 76 et seq.

[23] See art. 1 (c) of the United Nations Convention against Corruption.

[24] *The Human Rights Case Against Corruption*, p. 5.

[25] International Council on Human Rights Policy and Transparency International, eds., *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (2010), p. 45 et seq.

[26] *The Human Rights Case Against Corruption*, p. 5.

When accountability mechanisms are weak or non-existent, it becomes easy for corruption and for human rights violations to occur.[27]

34. It must be stressed that the human rights approach is not meant to be the exclusive way to tackle corruption. Highlighting the connection between human rights and corruption does not mean to jeopardize the prosecution of people found guilty of criminal offences because of acts of corruption or their liability under private law. The purpose of examining this connection is to identify additional avenues for developing strategies against corruption.

V. Are there experiences of integrating a human rights perspective into the fight against corruption?

35. The responses to the questionnaires received from States, national human rights institutions, non-governmental organizations (NGOs), and other stakeholders have permitted an analysis of whether, at the national level, there have been any experiences of integrating a human rights perspective into the fight against corruption.

36. The responses highlight the different institutional approaches to dealing with corruption. In a number of States, independent agencies have been tasked with counteracting corruption. Other States, in their replies, make reference to agencies or departments of the government that were assigned similar responsibilities. The organizational structure of such agencies or specialized institutions varies from State to State. In some States, NGOs are an important instrument in combating corruption. In addition, inspection bodies (e.g. supreme audit institutions) play an important role; some of these bodies expressed their interest in exploring human rights–based approaches, and work collaboratively with civil society and human rights organizations. Other States mention criminal prosecution or human rights institutions as the main instruments used in their fight against corruption.

37. With regard to the integration of a human rights perspective into strategies to combat corruption via cooperation between anti-corruption institutions and human rights institutions, the responses from States to the questionnaire reflect a multifaceted situation. Some of the responses indicate that there is either no cooperation or no effective cooperation. Often, there is no formal cooperation, but rather informal cooperation, via, for example, meetings, workshops, lectures, common training sessions, or exchanges of information. Inter-institutional working groups are a more formal means of cooperation mentioned in the responses. Some States indicate that cooperation between the institutions concerned exists on a case-by-case basis. To summarize, many States emphasized the need for, and the importance of, cooperation between the anti-corruption institutions and the human rights institutions, while specifying that such cooperation is at present informal and ad hoc in nature. These findings are also reflected in the responses to the questionnaire from national human rights institutions and some NGOs.

38. With regard to NGOs' responses to the questionnaire, it is noteworthy that some NGOs quote examples of cooperation between anti-corruption institutions and human rights institutions. However, no information is provided about the ways in which that cooperation takes place. The need for and importance of such cooperation is stressed in some responses.

39. In that regard, the response from the Council of Europe should be highlighted. It provides an illustrative example of integrating a human rights perspective into strategies to

[27] See Sharon Eicher, *Corruption in International Business*, p. 8 et seq.

combat corruption. As examples, the Council of Europe listed its Civil Law Convention on Corruption (mentioned earlier), and the establishment of the *Groupe d'États contre la corruption*, which invited the Council of Europe Commissioner for Human Rights to share his views on the possible impact of corruption on the effectiveness of human rights. In his view, the protection of victims of corruption, and the protection of persons who report suspicions of corruption, should be seen as important tools in promoting both human rights and ethical behaviour.[28]

40. From a more substantive (rather than an organizational) angle, it can be established from the answers to the questionnaire by States and other stakeholders that human rights play an important role in anti-corruption strategies. What is emphasized by some respondents is the importance of a well-informed and participatory society in order to combat corruption. This outcome would be further strengthened by human rights education, which can raise awareness of corruption.

41. Many of the respondents to the questionnaire state that it is essential to highlight the significance of the human rights perspective in the fight against corruption, and to integrate that perspective into anti-corruption policies. With regard to the question on the role of United Nations human rights bodies and mechanisms, many stakeholders suggest that measures be taken that are aimed at awareness-raising and education. More concretely, the relevant United Nations bodies are invited, in the responses to the questionnaire, to develop and present examples of good practices of combining anti-corruption measures with human rights. Furthermore, they are asked to prepare information and suggestions: to cite an example, they are asked to develop specific guidelines and strategic plans on how to integrate human rights into anti-corruption strategies. The answers to the questionnaire indicate that this substantive input should be shared by means of international conferences, seminars and trainings organized by the United Nations in cooperation with States. The importance of adequate information and of the training of national experts on this issue is also highlighted in the responses to the questionnaire.

VI. Corruption and human rights: the "non-victims"

42. When analysing the connection between corruption and human rights, the main focus is on the possible negative impact on the enjoyment of human rights for the victims of the corrupt act. That focus is the main advantage of carrying out such an analysis. The human rights of other actors involved should not, however, be disregarded. While the present report focuses mainly on the negative impact of corruption on the victims, a brief look at other persons involved is necessary.

43. Persons suspected of having committed a criminal offence relating to corrupt behaviour have rights as part of the criminal proceedings being taken against them. Even if effective criminal prosecution is an important tool against corruption, the rights of accused individuals must be guaranteed.

44. Human rights defenders — persons who individually or together with others strive for the promotion and protection of human rights and fundamental freedoms — are often subjects of harassment, intimidation, threats, arbitrary arrest and attacks. This also includes persons who denounce and fight corruption. According to the Declaration on Human Rights Defenders, States have a duty to protect human rights defenders against violence, threats,

[28] See *Groupe d'États contre la corruption*, Twelfth general activity report (2011), document GRECO (2012) 1 E Final.

retaliation, discrimination or any other arbitrary action as a consequence of their legitimate activities in promoting and protecting human rights.

45. Journalists reporting on cases of corruption or promoting human rights as part of their work play a crucial role in the dissemination of information, in awareness-raising, and in the realization of human rights and the fight against corruption. They often discover grievances and bring them to the attention of the public. The information that they provide is an essential precondition for transparency and responsibility. In its established case law, the European Court of Human Rights has emphasized the function of journalists as a "public watchdog".[29] Journalists frequently come under pressure because of their reporting. They may be prosecuted, defamed, harassed or even attacked. States are obliged to guarantee freedom of expression but also any other human rights that may be violated by means of threats or attacks against journalists.

46. Whistle-blowers' actions lead to the public disclosure of grievances in administrations or enterprises, and can contribute to the process of discovering and combating grievances in the institutions concerned. Whistle-blowing can be a valuable element in the fight against corruption in both public and private entities. Although a number of elements need to be examined about the behaviour of whistle-blowers,[30] they can play an important role as insiders who bring incriminating facts to the knowledge of the public. The State is under an obligation to guarantee the right to freedom of expression also to whistle-blowers. This is reflected in the recommendation of the Council of Europe Committee of Ministers on the protection of whistle-blowers, which was adopted on 30 April 2014.[31] The Committee of Ministers recommends that member States have in place a normative, institutional and judicial framework to protect individuals who, in the context of their work-based relationship, report or disclose information on threats or harm to the public interest.

VII. Recommendations by the Advisory Committee

47. **In its resolution, the Human Rights Council requested the Advisory Committee to make recommendations on how the Council and its subsidiary bodies should consider the issue of the negative impact of corruption on the enjoyment of human rights. The resulting report makes substantive as well as procedural recommendations.**

48. **It is largely accepted that there is a need to link anti-corruption measures with the realization and protection of human rights. What is missing at this stage, however, is strategies to translate the substantive linkage into concrete measures. It seems difficult to develop such strategies or concrete measures in an abstract manner. It seems more useful to identify good and best practices, from which to derive more general guidelines. Such best practices and guidelines would have to be communicated to national experts in an appropriate manner. Information-sharing, discussion and training could be considered, as ways of communicating with national experts. One possibility could be to develop standards on the independence and the modalities of**

[29] See, for example, European Court of Human Rights, 27 March 1996 (GC), *Goodwin* v. *the United Kingdom*, No. 17488/90, §§ 39, 46.

[30] See, for example, European Court of Human Rights, 21 July 2011, *Heinisch* v. *Germany*, No. 28274/08, §§ 65 et seq.

[31] Council of Europe, recommendation of the Committee of Ministers to member States on the protection of whistle-blowers, CM/Rec(2014)7, adopted on 30 April 2014.

anti-corruption agencies, drawing on the experience of OHCHR and the Human Rights Council with strengthening national human rights institutions.[32]

49. **In order to identify the above-mentioned best practices and to develop guidelines, a comprehensive study could be conducted by the competent bodies of the Human Rights Council. The study should aim at the development of concrete measures on how to establish the linkage between anti-corruption measures and a human rights–based approach in practice. Three different perspectives could be considered in the study:**

(a) How can anti-corruption institutions improve their work by integrating a human rights approach (e.g. the negative impact of corruption on the enjoyment of human rights)?

(b) How can human rights institutions expand the scope of their work by considering corruption as a reason for violations of human rights?

(c) How can the work of anti-corruption institutions and human rights institutions be interlinked, from the substantive, structural and organizational points of view?

50. **Moreover, the study should aim at finding criteria to establish whether an act of corruption leads to a human rights violation, and, contrariwise, whether a human rights violation leads to corruption. A list of attributes and indicators could be established as a basis for mainstreaming the issues in both fields and could contribute to rendering the connection between corruption and human rights operational. Equally importantly, the study should cover the protection of anti-corruption activists, whistle-blowers and journalists reporting on corruption. In that regard, one possible approach could be to reinforce protection of the above-mentioned persons under the Declaration on Human Rights Defenders.**[33]

51. **Preventive measures are the most effective means of countering corruption and of avoiding its negative impact on the enjoyment of human rights. Therefore, prevention at every level — national, regional and international — should be strengthened. Prevention requires awareness-raising, information-sharing, education, and the training of all stakeholders involved. Furthermore, sharing of best practices and guidelines, as mentioned above, can be a core element of preventive measures. One key aspect of preventive measures is to address, explicitly, the needs of vulnerable groups, who may be the very first victims of corruption and human rights violations.**

52. **The Advisory Committee recommends using the special procedures of the Human Rights Council to integrate a human rights perspective into anti-corruption strategies. Within the framework of the United Nations human rights bodies, a special procedures mandate (thematic mandate) could be established to examine, monitor, advise on and report on major phenomena of human rights violations. Such a mandate can be given to an individual — i.e. to a special rapporteur or an independent expert — or to a working group of experts (composed of five members). With regard to the issue of assessing the violation of human rights caused by corruption, it is appropriate to establish either an independent expert or a working group. The mandate holders would be able to receive information about (possible)**

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[32] See the statement delivered by Transparency International to the Advisory Committee, on 12 August 2014, during the Committee's thirteenth session. Available from http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session13/TransparencyInternational.pdf.

[33] Adopted by the General Assembly, A/RES/53/144.

violations of human rights caused by acts of corruption. In that way, they would be able to have an overview of human rights violations occurring as a result of corruption. The impact of corruption on specific human rights could be analysed, and gaps in protection could be identified, including the question of compensation for damage.[34] On the basis of this, new strategies that strengthen synergies between anti-corruption and human rights measures could be developed in the Human Rights Council and its competent bodies. Alongside the establishment of a specific mandate on the thematic issue of the negative impact of corruption on the enjoyment of human rights, every thematic and country mandate should consider paying attention to the linkage between corruption and human rights.[35] Given the wide range and the complexity of the issue, it may be appropriate to establish a five-person working group.

53. **Moreover, it is recommended that examination of the issue of corruption as a possible cause for human rights violations be integrated into the universal periodic review. According to Human Rights Council resolution 5/1 and the provisions on the universal periodic review mechanism, the universal periodic review process provides the opportunity for each State to provide information about actions it has taken to fulfil its human rights obligations and to improve its human rights situation. In the universal periodic review process, particular attention could be given to the question of whether, and to what extent, human rights violations in various States are consequences of corruption. Furthermore, actions against corruption, as means of improving the general enjoyment of human rights, could be included in the universal periodic review.[36]**

54. **Also, in the framework of the complaints procedure of the Human Rights Council, specific attention should be paid to possible violations of human rights caused by corruption. The Working Group on Communications and the Working Group on Situations, which are the competent bodies to examine communications, should bear in mind the negative impact of corruption on the enjoyment of human rights. Any connection with acts of corruption or corrupt behaviour as causes of the alleged human rights violations should be indicated in the course of the examination of a communication. Also in this respect, a catalogue of criteria (as mentioned in para. 50) may be helpful.**

55. **There is a strong need for United Nations bodies and organizations to enter into dialogue with each other and with other international organizations dealing with anti-corruption strategies. This inter-institutional approach should include, in particular, the United Nations Office on Drugs and Crime, as the guardian of the United Nations Convention against Corruption. It is of utmost importance that all the institutions involved have a good knowledge of each other, that they share all information, and that they establish linkages between the measures that they take. The mutual consideration and integration aims at building a network in order to act more effectively in an anti-corruption alliance.**

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[34] See art. 35 of the United Nations Convention against Corruption.

[35] See the submission by OHCHR to the questionnaire.

[36] See the submission by Denmark to the questionnaire.